Local Union No. 626, United Brotherhood of Carpenters & Joiners of America, AFL–CIO (Strawbridge & Clothier) ***and*** **Michael McCaffrey** ***and*** **Robert Stone.** Cases 4–CB–6387 and 4–CB–6399

February 18, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On August 12, 1992, Administrative Law Judge Frank H. Itkin issued the attached decision. The Respondent filed exceptions and a supporting brief; the General Counsel filed cross-exceptions, a supporting brief, and an answering brief; and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions to the extent consistent with this decision and to adopt the recommended Order as modified.

The judge dismissed the 8(b)(2) allegation that the Respondent caused Strawbridge & Clothier (the Employer) to discriminate against members Michael McCaffrey and Robert Stone. The General Counsel has excepted and argues that all of the facts necessary for an 8(b)(2) violation were established at the hearing on the basis of testimony credited by the judge. We agree with the General Counsel.

The judge found, and we agree,[2] that the Respondent violated Section 8(b)(1)(A) of the Act by changing its hiring hall practices in order to retaliate against members McCaffrey and Stone for their opposition to Robert McCullough in his successful bid to be elected the Respondent's business agent. The judge specifically found that McCullough required the Employer to forego its past right to request members by name when calling the hiring hall and to stop its past practice of transferring employee members from store to store once they were referred. The Respondent's actions were in response to the Employer's request for McCaffrey and Stone, as well as the Employer's promise to transfer them from one store to another once their initial work was completed.[3]

As the judge found, the Employer's failure to transfer McCaffrey and Stone to a second store was a direct result of the Respondent's unlawful actions. The judge concluded, however, that there could be no 8(b)(2) violation without an exclusive hiring hall arrangement. Because this case does not involve an exclusive hiring hall, the judge dismissed this allegation. For the following reasons, we reverse the judge and find that the Respondent violated Section 8(b)(2).

The judge correctly found that a union does not violate Section 8(b)(2) by virtue of its operation of a nonexclusive hiring hall. *Development Consultants*, 300 NLRB 479, 480 (1990). A union which operates a nonexclusive hiring hall may, however, violate this provision where it causes an employer to discriminate against employees within the meaning of Section 8(b)(2). Id. (union violated Sec. 8(b)(2) by attempting to cause an employer to terminate and refuse to recall an employee). Cf. *Carpenters Local 537 (E.I. Dupont)*, supra (no 8(b)(2) violation in failure to refer because union did not operate exclusive hiring hall and since there is no evidence that union ''caused or attempted'' to cause employer to discriminate against employee within the meaning of this Section).

Here, the Respondent required the Employer to change its past practice and refrain from transferring member employees among the different stores. McCaffrey and Stone were denied promised transfers as a direct result of the Respondent's action. In this manner, the Respondent attempted to and did cause the Employer to discriminate against McCaffrey and Stone in retaliation for their protected activity. Accordingly, we find that, even absent an exclusive hiring hall, the Respondent's actions violated Section 8(b)(2).

AMENDED CONCLUSIONS OF LAW[4]

Substitute the following for Conclusion of Law 4.

''4. The Respondent, for the reasons stated above, prevented McCaffrey's and Stone's transfers from one

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We correct the judge's finding that Strawbridge & Clothier employee Michael Stipo made repeated attempts to call the union hiring hall on July 16, 1991. The record shows that Stipo attempted to call the hiring hall, but not repeatedly, on that date. This change has no effect on our decision given the Union's nonexclusive hiring hall arrangement and the other circumstances in this case.

[2] Where a union operates a nonexclusive hiring hall, no 8(b)(1)(A) duty of fair representation attaches to its operation of that hiring hall. *Carpenters Local 537 (E.I. Dupont)*, 303 NLRB 419 (1991). Even without an exclusive hiring hall arrangement, however, a union violates Sec. 8(b)(1)(A) where, as here, it discriminates against members in retaliation for their protected activities. Id.; *Teamsters Local 460 (Superior Asphalt)*, 300 NLRB 441, 441 and fn. 1 (1990); *Development Consultants*, 300 NLRB 479, 480 (1990).

[3] Although the Respondent contends that it was merely an employee, rather than a manager, of the Employer who promised McCaffrey and Stone the transfers, the record demonstrates that employee's established authority to arrange for the hiring and transfer of employees.

[4] The judge's proposed remedy makes McCaffrey and Stone whole for their losses because of the 8(b)(1)(A) violation. Accordingly, we do not need to change the remedy.

of the Employer's stores to another in violation of Section 8(b)(2) of the Act.''

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Local Union No. 626, United Brotherhood of Carpenters & Joiners of America, AFL–CIO, New Castle, Delaware, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(b) and reletter the subsequent paragraph.

''(b) Causing or attempting to cause the Employer to refrain from transferring employee members Michael McCaffrey and Robert Stone among its various stores because they opposed Union Business Representative Robert McCullough in an election for the Union's officers.''

2. Insert the following as paragraph 2(e) and reletter the subsequent paragraph.

''(e) Sign and return to the Regional Director sufficient copies of the notice for posting by all employers utilizing its hiring hall, if willing, at all places where notices to employees are customarily posted.''

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT negotiate any agreement with Employer Strawbridge & Clothier which prohibits the Employer from requesting specific employee members of the Union for referral for employment and also prohibits the Employer from transferring employee members among its various stores, in order to prevent employee members Michael McCaffrey and Robert Stone from obtaining future employment opportunities with the Employer, because McCaffrey and Stone had opposed Union Business Representative Robert McCullough in an election for the Union's officers.

WE WILL NOT cause or attempt to cause the Employer to refrain from transferring employee members Michael McCaffrey and Robert Stone among its various stores because they opposed Union Business Representative Robert McCullough in an election for the Union's officers.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind our agreement with Strawbridge & Clothier whereby the Employer is prohibited from requesting specific employee members of the Union for employment and from transferring employee members from store to store; and notify in writing the Employer that it is no longer prohibited from requesting specific employee members of the Union for employment and from transferring employee members from store to store.

WE WILL make employee members McCaffrey and Stone whole for any loss of earnings and other benefits they may have suffered as a result of our conduct found unlawful in the Board's Decision, with interest, as provided in the Board's Decision.

LOCAL UNION NO. 626, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICAN AFL–CIO

Donna D. Richardson, Esq., for the General Counsel.
Thomas W. Jennings, Esq., for the Respondent Union.
Michael McCaffrey and *Robert Stone*, pro se, Charging Parties.

DECISION

FRANK H. ITKIN, Administrative Law Judge. Unfair labor practice charges and amended charges were filed in the above cases on August 5 and 15, November 27, and December 2, 1991. A consolidated complaint issued on November 29, and was amended on December 16 and 18, 1991. General Counsel alleges that about July 17, 1991, Respondent Union and Employer Strawbridge & Clothier negotiated an agreement which prohibited the Employer from requesting specific employee members of the Union for employment and also prohibited the Employer from transferring employee members among its various stores; this agreement prevented employee members Michael McCaffrey and Robert Stone, Charging Parties, from obtaining future employment opportunities with the Employer; the Union engaged in the above conduct because McCaffrey and Stone had opposed Union Business Representative Robert McCullough in an election for the Union's officers; and, consequently, the Union's conduct was based on arbitrary and discriminatory considerations in violation of Sections 8(b)(1)(A) and (2) of the National Labor Relations Act. Respondent Union denies violating the Act as alleged.

A hearing was held on the issues raised in Philadelphia, Pennsylvania on April 6, 1992. Upon the entire record, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

Strawbridge & Clothier is admittedly an employer engaged in commerce as alleged. Respondent Union is admittedly a labor organization as alleged. Strawbridge, a Pennsylvania corporation, has retail stores in Philadelphia and the nearby

Christiana and Concord Malls in the Delaware area. Harry Buckley is employed by Strawbridge as manager of its carpentry and painting service department. In that capacity, Buckley would ''call Local 626 requesting help'' and the Union would ''supply'' ''carpenters'' ''as required'' to Strawbridge's retail stores in the Christiana and Concord Malls.

According to Buckley, under ''the current procedure,'' ''I call Local 626 requesting help, giving an approximate start date and length of job duration''; ''I do not'' ''request carpenters by name''; and ''when a job is complete'' ''we do not'' ''transfer from one store to another.'' Buckley noted that this ''current procedure'' was first instituted about mid July 1991. Previously, as Buckley recalled,

> I would ascertain the amount of labor required . . . , discuss it [with the particular] local store carpenter either in Christiana or Concord, and they would go about the mechanics of getting the labor as needed.

Buckley explained how the ''change'' to the ''current procedure'' had occurred. About July 16, 1991, he had requested store carpenter Michael Stipo to hire two carpenters. Michael McCaffrey and Robert Stone were hired. Shortly thereafter, Union Business Agent Robert McCullough telephoned Buckley and, in an ''excited'' manner,

> he [McCullough] requested that from now on . . . I [Buckley] talk to him to solicit help for jobs [and] at the end of a given job in one [store] we refrain from transferring people to another facility.[1]

In addition, McCullough, by letter dated July 17, 1991 (G.C. Exh. 3), sent Buckley ''a working agreement with Carpenters Local 626,'' advising Buckley:

> For Local 626's benefit administrator to accept and retain any [fund] benefit contributions from your Company [for employee members] this agreement must be signed.

The Employer thereafter executed a ''letter agreement'' which was ''acceptable'' to the Union.

Buckley recalled that previously, in May 1989, the Union had requested his Employer to sign a ''memorandum of agreement'' (G.C. Exh. 2); the Employer did not sign that ''memorandum of agreement'' although it thereafter complied with the ''terms and conditions'' of the agreement including ''paying the fringes as they're due''; and the Union, until mid-July 1991, had made no attempts to force the Employer to sign such an agreement or warn that ''the Union was unable to accept [payments of fund] benefits from Strawbridge because there was no contract.''

Michael Stipo testified that he is employed by Strawbridge as a store carpenter; when he has other carpenters working with him he is a foreman for the Employer; and that the ''current procedure'' used by the Employer ''when hiring members of Carpenters Local 626'' is, as follows:

> Right now Mr. Buckley and I will discuss whenever I need a man or men, and he does the calling and hiring of the men. He will call the Union Hall.

The Employer, under this ''current procedure,'' will not request ''men by name'' and will not ''when one job is complete . . . transfer men from one store to another.'' Stipo noted that, under the ''prior procedure,'' ''we would call and ask for men by name'' for ''renovation or any store work we needed done''; Stipo called ''most of the time'' speaking with business agent McCullough ''if possible''; and ''when one job was complete'' the Employer would ''transfer the men from one store to another.''

Stipo testified that on July 16, 1991,

> Mr. Buckley and I discussed [hiring two carpenters from Local 626] . . . and we talked about hiring McCaffrey and Stone. Stone was going to be transferred to Concord. And when McCaffrey and I would be finished [at the Christiana store], we both would be transferred to Concord to finish the renovation up there.

Stipo repeatedly telephoned the union hall later that day to request employee members McCaffrey and Stone; however, he was unable to speak with anyone there. Consequently, because Stipo ''needed the two men for the [next morning], he telephoned both McCaffrey and Stone, and asked them to ''come in'' and ''we would call the Hall the next morning to report'' the hirings.

As Stipo further recalled, McCaffrey and Stone showed up for work on July 17 and Stipo reported their hirings to the Union's assistant business agent Norman Harris who stated that ''there was no problem.'' Shortly thereafter, Stipo received a telephone call from Buckley advising him that business agent ''McCullough was upset.'' Stipo telephoned McCullough. McCullough then stated that he wanted Strawbridge to sign a contract.'' Stipo offered to ''send the men back.'' McCullough replied: ''Don't send them back . . . he didn't want to get in trouble.'' Stipo promptly reported this conversation to Buckley. And, McCaffrey and Stone then decided ''to leave'' the job.

Stipo, as he further recalled, telephoned the Union Hall on July 17 and explained to business agent McCullough that he ''needed the two men for the next morning . . . and would like to have Stone and McCaffrey because they had worked with [him] in the past.'' McCullough responded: ''Strawbridge wasn't getting anyone until they signed their contract.'' Stipo understood that the Employer could no longer ''call the Union Hall and name request men'' as it had done in the past. Previously, Stipo had repeatedly telephoned the Hall and requested both McCaffrey and Stone, usually speaking with McCullough. His ''name requests'' were ''honored'' and, further, he would ''transfer carpenters from store to store.''

Stipo explained that on June 19, 1991, some 4 weeks before the above incident, the Union had elected its officers. During the Union's election campaign, Stipo, Stone, and McCaffrey had ''openly'' opposed McCullough in his bid to be elected as business agent.

Robert Stone testified that he has been a member of Local 626 for 31 years; he is also a trustee for the Union; he obtains work referrals from the Union; and, in addition,

[1] Buckley was uncertain whether or not McCullough also discussed on this occasion the Employer's ''ability to ask for carpenters by name'' although Buckley would ''certainly not deny'' such a ''conversation'' took place.

> I [Stone] also visited jobs and, if there's work available and I can procure it on my own, I advise McCullough that the job is there and get his okay to go to work.

Stone has worked for Strawbridge in the past ''on several occasions,'' with the ''okay'' of McCullough.

Stone testified that on July 16, 1991, he ''got a message . . . from Stipo . . . asking [him] if [he would] like to go to work for Strawbridge'' at the Christiana store. Stone telephoned Stipo and was instructed to ''be there in the morning, but you'll have to call McCullough and tell him that you're going to work there.'' Stone thereafter reported for work at the store on July 17. Assistant Business Agent Harris was there and said that it ''would . . . be okay if I [Stone] went to work'' and ''he [Harris] said he would take care of notifying McCullough that I was going to work at Strawbridge.'' Later, ''there were numerous phone calls'' to the union hall and Stone ''decided to go back to the Union Hall to find out what McCullough really had to say and whether we could go to work or not.''

Stone and McCaffrey went to the union hall on July 17. Stone testified:

> He [McCullough] let us know at that particular time that if there was no contract we weren't supposed to go to work for [Strawbridge], and that our [fund] benefits couldn't be paid because of no contract. And, in the course of the conversation, I [Stone] noticed that he [McCullough] was over aggravated, and I asked him . . . how come you're so mad. . . . At this time he says, well, you know what you did to me at election time. . . . And, I said, no, what? . . . And he said, well, if you don't know . . . you're dumber than I think you are.

Stone had openly supported McCullough's opponent during the recent union election some 4 weeks earlier.

Stone acknowledged on cross-examination that McCullough did not ''specifically'' tell him ''not to go to work'' at Strawbridge. Stone added: ''I didn't want to work without getting my full pay or full benefits.'' He therefore did not return to the Christiana store on July 17. However, on the ''night of the 17th McCullough called . . . and said it was okay to go back to work for Strawbridge . . . he had worked out a deal . . . an agreement.'' Stone returned to the job on July 18.

Stone, when hired on July 17, had been advised by Stipo that he would first work at the Christiana store for about 1-1/2 weeks and then would be transferred to the Concord store to work some 4 to 6 weeks. As counsel for the Union acknowledged (Tr. pp. 107 to 109), Stone ''was allowed to finish up what he was doing at the time'' at the Christiana Mall but was not ''transferred'' to the Concord Mall as a result of the ''agreement'' reached.

Michael McCaffrey testified that he has been a member of Local 626 for 32 years; he too obtains employment by referrals from the union hall and ''soliciting his own work''; he was hired on July 16, 1991, by Stipo for work at Strawbridge; he arrived at the job on the morning of July 17; he later heard of a telephone call and some ''concern about collecting benefits''; and, consequently, he and Stone left the job and went to the union hall. There, he was told by Business Agent McCullough: ''there is no contract . . . there is no work.''

McCaffrey further recalled:

> I [McCaffrey] asked him [McCullough] again . . . what can I do to go to work. And he says you can't go to work because they're not going to take the benefits . . . [and] someone could bring me up on charges if I go to work. . . . Stone asked why he [McCullough] was so mad, and he said you know what you did to me this election . . . .

Later that same evening, as McCaffrey explained on cross-examination, McCullough telephoned him and said ''that [an] agreement had been made and go to work'' for Strawbridge. As noted, under this ''agreement'' McCaffrey could not ''transfer'' from one store job to another as had been permitted in the past.

Robert McCullough testified that he has been business representative for the Union since 1977; his Union has some 650 ''active'' members ''looking for work or working''; and the Union refers members to jobs for which they are qualified ''sending out [first] the ones that have been out [of work] the longest.'' McCullough noted that the Union and various employers have established, under their collective-bargaining agreements, health and welfare and pension funds jointly administered by Union and employer trustees; the funds are maintained by contributions made pursuant to the terms of the collective-bargaining agreements; and to be eligible to get, for example, medical benefits from the appropriate fund a member must work a minimum number of hours during a certain period of time. McCullough asserted that the Union, faced with hard economic times in the labor market, ''was trying to spread'' the available ''work around'' and maintain benefit ''eligibility'' for its members during the pertinent time period.[2]

McCullough was asked ''why'' the problem with Strawbridge ''surfaced'' or ''came to a head'' in July 1991, as demonstrated by the above testimony. He responded:

> Well the situation was that we at the trustees' meeting several times have been asked by employer trustees do we have anybody that isn't signatory to the collective bargaining agreement. And I have stated over the years that we have two or three that I know of. And I just happened to at that particular time request a collective bargaining agreement be signed by the three people [including Strawbridge] that had no collective bargaining agreement [and] were hiring men off and on from the Union Hall for the benefits.

McCullough concededly had been having ''a running battle with Strawbridge over the years with regard to whether or not they were going to sign a contract or agreement.'' Strawbridge had refused to sign such a contract although it

[2] See R. Exhs. 2 through 5 and Tr. 170 to 178. Counsel for Respondent Union and McCullough claimed that the above exhibits ''show the sharp reduction in hours for the last ten years and particularly the last two years in available work within the geographic jurisdiction of the Union . . . .'' The Union concededly had been ''experiencing these lows . . . over the last eight to ten years . . . .''

had agreed to make fringe benefit contributions and pay contract wages for a number of years. (Cf. R. Exh. 6.)

Elsewhere, McCullough suggested that his confrontation with Buckley on July 17, 1991, was at least in part because Stipo had ''called the men directly.'' He then added that he had called Buckley on July 17 ''to inform him that we would need a collective-bargaining agreement signed'' and apparently the ''direct'' hiring of Stone and McCaffrey had refreshed his ''recollection that Strawbridge had yet to sign the agreement.'' He then added that ''I'd have to get an agreement signed so the benefits could be accepted'' in accordance with his understanding of the applicable law. He then added that he had sent identical letters to employers Strawbridge, A. Pomerantz & Co. and William T. Smack Co., Inc. on July 17 enclosing an ''agreement'' to be signed and warning that the administrator would not ''accept and retain benefit contributions from your company'' unless the agreement was ''signed.'' (See G.C. Exh. 3 and R. Exhs. 7 and 8.) He acknowledged, however, that at the particular time neither Pomerantz nor Smack ''employed'' any ''members of Local 626.''

McCullough also asserted that he spoke to McCaffrey and Stone on July 17 at the Union's hall and

> I told them that . . . I had no problem with them going to work. I just had to inform them that there is a possibility that [their] benefit payments may not be accepted by the administrator.

McCullough admittedly had never similarly warned these two employees in the past when they worked for Strawbridge. Further, McCullough insisted that ''I never brought [the Union] election up during the whole conversation.'' He later added: ''I can't remember if they made [the statement or a related statement] or not. They may have. I don't know. I can't remember.'' He could ''not really'' ''recall'' ''what could have been said.''

And, McCullough asserted that ''I got an agreement with'' Strawbridge shortly after the above incident in 1991. (Cf. R. Exhs. 9, 10, and 11.) Pomerantz and Smack—the two other employers contacted by the Union even though they did not then employ its carpenters—never signed any ''agreement'' with the Union.

McCullough denied, inter alia, attempting to apply the Union's ''no transfer rule'' ''in an inequitable or discriminatory manner so as to work to the disadvantage of . . . Stone and McCaffrey.'' He reluctantly admitted telling Buckley on July 17 that Stipo ''could no longer call the Hall for men.'' He denied telling Buckley that he could not ''name request'' carpenters. Elsewhere, he admitted that ''at some point'' he did ''talk to [Buckley] about requesting men by name.'' And, he admitted telling Buckley that Buckley ''could not transfer men from store to store.'' Elsewhere, he admitted that ''employers who are signators'' to the Union's ''agreement'' are ''permitted'' to ''transfer employees from project to project'' when ''work is plentiful.'' He added that if such employers ''have steady personnel'' ''we have no reason . . . to deny them a transfer as long as they are regular employees.'' He also added that ''any contractor can name request'' and ''sometimes I do [honor these name requests] and sometimes I don't.''

I credit the testimony of Buckley, Stipo, Stone, and McCaffrey as detailed above. Their testimony is in significant part mutually corroborative. Their testimony is also substantiated by admissions of McCullough and his counsel. And, they impressed me as trustworthy and reliable witnesses. On the other hand, I find the testimony of McCullough to be vague, evasive, contradictory and confusing. I do not find him to be a trustworthy or reliable witness. In particular, I reject as incredible his denial that he had attempted to apply the Union's ''no transfer rule'' ''in an inequitable or discriminatory manner so as to work to the disadvantage of . . . Stone and McCaffrey.'' On the contrary, as discussed below, I find instead that his conduct during the pertinent sequence of events was in retaliation against employee members Stone and McCaffrey because they had openly supported his opponent during the recent union election.

Discussion

As stated in *Operating Engineers Local 18 (C. F. Braun Co.),* 205 NLRB 901, 910 (1973), enfd. 500 F.2d 48 (6th Cir. 1974):

> It is settled law that a labor organization which undertakes to operate a hiring hall pursuant to contract or other arrangement with employers as the exclusive source of recruitment of employees is obligated to refer job applicants without regard to their union . . . loyalty or lack of it . . . . It is also settled that the activities of employees . . . to oust the incumbent union leadership and elect new union officers . . . are concerted activities protected by Section 7 of the Act . . . . Accordingly, a union violates Section 8(b)(2) and 8(b)(1)(A) by refusing to refer or otherwise causing an employer to discriminate against an employee because he has engaged in the foregoing protected activities . . . . Of course, an express demand by a union that an employer discriminate against an employee is not required in order to find a violation of Section 8(b)(2). Conduct of union representatives which is tantamount to a request to discriminate with respect to the terms of an individual's employment and reasonably calculated to bring about that result violates the Act . . . . [Citations and quotations omitted.]

And, in *Laborers Local 135 (Bechtel Corp.),* 271 NLRB 777, 780 (1984), the Board explained:

> It is well established that discriminatory referrals from an exclusive hiring hall violate Section 8(b)(2) . . . . Similarly, a union violates Section 8(b)(1)(A) when it refuses to refer individuals from a nonexclusive referral hall based on discriminatory reasons including, as here, internal union politics . . . . In either event the remedy for the discrimination is the same . . . full backpay . . . . [Citations and quotations omitted.]

See also *Development Consultants,* 300 NLRB 479 (1990); and *Operating Engineers Local 478 (Stone & Webster),* 274 NLRB 567 (1985).

In the instant case, the Union had for many years referred carpenters to the Employer from its hiring hall.[3] The Employer was permitted to request specific employee members and later transfer these employees from store to store upon the completion of work at one location. The fact that the Employer had refused in the past to execute a contract with the Union was not deemed by the Union to be an obstacle to the maintenance of this referral arrangement. And, specifically, the Union had permitted the Employer under this arrangement to ''name request'' employee members McCaffrey and Stone for referral and transfer from one store to the other upon completion of work.

However, during June 1991, McCaffrey and Stone had openly campaigned against Union Business Agent McCullough in his bid to be reelected. McCullough was reelected on June 19. And, on July 17, when the Employer again ''name requested'' McCaffrey and Stone to perform carpentry work at its various stores, McCullough suddenly balked at this prior practice. The Employer was required instead to execute an agreement with the Union which, as foreman Stipo credibly testified, changed the ''prior procedure.'' The Employer could no longer ''name request'' employee members and transfer them from store to store. I find and conclude on this record that the Union caused this sudden change in its referral ''procedure'' in retaliation against employee members McCaffrey and Stone because of their opposition to McCullough's reelection as business representative. These unlawful arbitrary and discriminatory considerations for Union conduct prevented the two employee members from obtaining future employment opportunities, in violation of Section 8(b)(1)(A) of the Act.

For, as explained in *Operating Engineers Local 478 (Stone & Webster)*, supra,

> A union violates Section 8(b)(1)(A) of the Act by restraining and coercing an employee because of an employee's dissident union activities. . . . When union conduct adversely affects employment opportunities, it visits economic sanctions upon an employee within the definition of the words ''restraint and coercion'' . . . as used in Section 8(b)(1)(A) . . . .

Thus, as employee member Stone credibly testified, on July 16 he ''got a message . . . from Stipo . . . asking [him] if [he would] like to go to work for Strawbridge'' at the Christiana store. Stone telephoned Stipo and was instructed to ''be there in the morning, but you'll have to call McCullough and tell him that you're going to work there.'' Stone thereafter reported for work at the store on July 17. Assistant Business Agent Harris was there and said that it ''would . . . be okay if I [Stone] went to work'' and ''he [Harris] said he would take care of notifying McCullough that I was going to work at Strawbridge.'' Later, ''there were numerous phone calls'' to the union hall and Stone ''decided to go back to the Union Hall to find out what McCullough really had to say and whether we could go to work or not.'' Stone and McCaffrey went to the union hall on July 17. Stone testified:

> He [McCullough] let us know at that particular time that if there was no contract we weren't supposed to go to work for [Strawbridge], and that our [fund] benefits couldn't be paid because of no contract. And, in the course of the conversation, I [Stone] noticed that he [McCullough] was over aggravated, and I asked him . . . how come you're so mad. . . . At this time he says, well, you know what you did to me at election time. . . . And, I said, no, what? . . . And he said, well, if you don't know . . . you're dumber than I think you are.

Finally, on the ''night of the 17th McCullough called [Stone] and said it was okay to go back to work for Strawbridge . . . he had worked out a deal . . . an agreement.'' Stone, when hired, had been advised by Stipo that he would first work at the Christiana store for about one and a half weeks and then would be transferred to the Concord store to work some 4 to 6 weeks. As counsel for the Union acknowledged (Tr. pp. 107 to 109), Stone ''was allowed to finish up what he was doing at the time'' at the Christiana Mall but was not ''transferred'' to the Concord Mall as a result of the ''agreement'' reached.

Employee member McCaffrey also credibly recalled being told by McCullough on July 17:

> [T]here is no contract . . . there is no work. . . . [McCaffrey] asked him [McCullough] again . . . what can I do to go to work. And he says you can't go to work because they're not going to take the benefits . . . [and] someone could bring me up on charges if I go to work. . . . Stone asked why he [McCullough] was so mad, and he said you know what you did to me this election . . . .

Later that same evening, McCullough telephoned McCaffrey and said ''that [an] agreement had been made and go to work'' for Strawbridge. As noted, under this ''agreement'' McCaffrey could not ''transfer'' from one store job to another as had been permitted in the past.

Respondent Union argues that the Union's conduct placed in issue here was for lawful and legitimate reasons. Thus, as Union Business Representative McCullough asserted, the Union, faced with hard economic times in the labor market, ''was trying to spread'' the available ''work around'' and maintain benefit ''eligibility'' for its members during the pertinent time period. McCullough, however, could not credibly explain ''why'' this problem with Strawbridge suddenly ''surfaced'' or ''came to a head'' in July 1991. The Union concededly had been ''experiencing these lows . . . over the last eight to ten years . . . .'' And, the Employer had refused to sign an ''agreement'' with the Union for a number of years although it had fully complied with Union benefit and fund provisions. McCullough elsewhere asserted that ''I just happened to at that particular time request a collective bargaining agreement be signed by the three people [including Strawbridge] that had no collective bargaining agreement [and] were hiring men off and on from the Union Hall for the benefits.'' McCullough, however, acknowledged that the two other employers cited by him did not then em-

[3] Although Strawbridge's department manager, Buckley, was ''under the impression that [he] must hire carpenters from Local 626,'' he acknowledged that there is nothing in the Union's contract ''that smacks of what we call . . . an exclusive hiring hall'' and in fact ''the contract specifically permits the Employer to hire from the street.'' See Tr. 40 to 41.

ploy any of his Union's members and apparently those two employers have never signed such an ''agreement.'' He then added that ''I'd have to get an agreement signed so the benefits could be accepted'' in accordance with his understanding of the applicable law, although apparently this had not been an obstacle in the past to the acceptance of fringe benefit payments from Strawbridge.

I reject as incredible these and related shifting and belated reasons for the Union's conduct. I find instead that the real reason for the Union's conduct was to retaliate against employee members Stone and McCaffrey because they had engaged in the statutorily protected activity of opposing McCullough in his bid to be reelected as business agent. The Union's conduct in the instant case was motivated by arbitrary and discriminatory considerations, in violation of Section 8(b)(1)(A) of the Act. Moreover, I reject any contention here that the Union would have, regardless of the protected activity of Stone and McCaffrey, pursued its challenged conduct for lawful or legitimate reasons. On the contrary, this record amply demonstrates that the failure of the Employer to execute an agreement over the years had not resulted in any Union action and only became a problem because the employee members had opposed the incumbent business agent during the recent Union election.[4]

CONCLUSIONS OF LAW

1. Respondent Union is a labor organization as alleged.

2. Strawbridge is an employer engaged in commerce as alleged.

3. Respondent Union and Employer Strawbridge negotiated an agreement which prohibited the Employer from requesting specific employee members of the Union for referral for employment and also prohibited the Employer from transferring employee members among its various stores; this agreement prevented employee members Michael McCaffrey and Robert Stone from obtaining future employment opportunities with the Employer; the Union engaged in the above conduct because McCaffrey and Stone had opposed Union business representative Robert McCullough in an election for the Union's officers; and, consequently, the Union's conduct was based on arbitrary and discriminatory considerations in violation of Section 8(b)(1)(A) of the National Labor Relations Act.

4. General Counsel has failed to prove a violation of Section 8(b)(2) of the Act and these allegations of the complaint will be dismissed.

5. The unfair labor practices found above affect commerce as alleged.

REMEDY

To remedy the unfair labor practices found above, Respondent Union will be directed to cease and desist from engaging in such unlawful conduct or like or related conduct and to post copies of the attached notice. Affirmatively, to effectuate the policies of the Act, Respondent Union will be directed to restore the status quo ante by rescinding its agreement with Strawbridge whereby the Employer was prohibited from requesting specific employee members of the Union for employment and from transferring employee members from store to store; notify in writing the Employer that it is no longer prohibited from requesting specific employee members of the Union for employment and from transferring employee members from store to store; and make employee members McCaffrey and Stone whole for any loss of earnings and other benefits they may have suffered as a result of the Union's conduct found unlawful herein, backpay to be computed as described in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Respondent Union will also be directed to preserve and, on request, make available to the Board or its agents for examination or copying all hiring hall records, dispatch lists, referral cards and other documents necessary or useful in analyzing and computing the amount of backpay and compliance.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Local Union No. 626, United Brotherhood of Carpenters & Joiners of America, AFL–CIO, New Castle, Delaware, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Negotiating any agreement with Employer Strawbridge & Clothier which prohibits the Employer from requesting specific employee members of the Union for referral for employment and also prohibits the Employer from transferring employee members among its various stores, in order to prevent employee members Michael McCaffrey and Robert Stone from obtaining future employment opportunities with the Employer, because McCaffrey and Stone had opposed Union Business Representative Robert McCullough in an election for the Union's officers.

(b) In any like or related manner restraining or coercing employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind its agreement with Strawbridge whereby the Employer is prohibited from requesting specific employee members of the Union for employment and from transferring employee members from store to store; and notify in writing the Employer that it is no longer prohibited from requesting specific employee members of the Union for employment and from transferring employee members from store to store.

(b) Make employee members McCaffrey and Stone whole for any loss of earnings and other benefits they may have suffered as a result of the Union's conduct found unlawful in the Board's Decision, with interest, as provided in the Board's Decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records

[4] Counsel for General Counsel has failed to sustain her burden of sufficiently establishing an exclusive hiring hall arrangement on which to predicate an 8(b)(2) finding. I would therefore dismiss this allegation of the complaint.

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at offices in New Castle, Deleware, copies of the attached notice marked ''Appendix.''[6] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employee-members and applicants are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''